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May 7, 1999

JUDITH ST. LEDGER-ROTY

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E-MAIL: jstledgerrody@kelleydrye.com

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RECEIVED  
MAY 7 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation  
Conditions Required for the Proposed SBC-Ameritech Merger

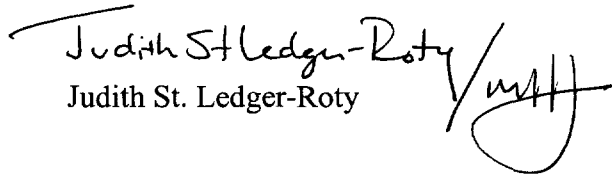
Dear Ms. Salas:

Enclosed you will find an original and two copies of the Written Comments of the undersigned with regard to the Public Forum On SBC Communications, Inc. and Ameritech Corporation, Applications for Transfer of Control, in CC Docket No. 98-141. We have also included a copy marked "KDW Stamp-In" to be date-stamped as received by your office and returned to the messenger bearing this filing.

If there are any questions concerning this filing, please do not hesitate to contact the undersigned directly.

Respectfully submitted,

Judith St Ledger-Roty  
Judith St. Ledger-Roty



JSLR:cpa  
Enclosure

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E-MAIL: jstledgerroty@kelleydrye.com

VIA HAND DELIVERY

TO: See Service List

Re: Conditions Required for the Proposed SBC-Ameritech Merger

Enclosed please find Written Comments submitted on behalf of Paging Network, Inc. ("PageNet") regarding the Proposed SBC-Ameritech merger.

In sum, while neither of these incumbent local exchange carriers has been exemplary in negotiating interconnection agreements with paging/messaging carriers, SBC remains in flagrant violation of the Commission's rules that require it to deliver its traffic to paging carriers without charge, and that require it to compensate paging carriers for their costs of call termination.

PageNet has been able to reach agreement with Ameritech for each of the Ameritech states, and with Bell Atlantic and Sprint in their operating states. SBC, on the other hand, has unlawfully exercised its market power to delay/preclude paging carriers from entering into agreements that would provide for the satisfaction of SBC's statutory obligations of termination compensation and delivery of its traffic to messaging carriers without charge.

PageNet respectfully requests that the Commission NOT permit the merger unless certain conditions are immediately met. These conditions consist of the following:

- Require SBC to immediately (by June 15, 1999) enter into interconnection agreements with PageNet on terms no less favorable than those entered between PageNet and Ameritech;

May 7, 1999

Page Two

- Require SBC to permit other messaging carriers to enter into those same agreements under Section 252(i); and
- Require SBC to immediately (by June 15, 1999) cease billing paging carriers for facilities and to refund all monies collected for facilities since the Commission's Order in 96-98 requiring such cessation, and pay the paging carriers the maximum interest allowed by law, plus appropriate penalties.

Thank you for your attention to this matter. I, or my colleague, Michael Francesconi, will be calling you shortly to set up meetings to discuss our remarks.

Respectfully submitted,

*originals are signed*

Judith St. Ledger-Roty  
Attorney for Paging Network, Inc.

Enclosure.

**WRITTEN COMMENTS OF JUDITH ST. LEDGER-ROTY  
ON BEHALF OF  
PAGING NETWORK, INC.**

**PUBLIC FORUM ON SBC COMMUNICATIONS, INC. AND  
AMERITECH CORPORATION, APPLICATIONS FOR TRANSFER OF CONTROL**

**CC DOCKET NO. 98-141  
May 7, 1999**

Mr. Chairman, Commissioners:

Thank you for affording me this opportunity to discuss with you the concerns of Paging Network, Inc., and more broadly, the concerns of the entire paging and messaging industry with respect to the proposed merger of SBC Communications and Ameritech. I am here today to compare and contrast the conduct of these two companies with respect to interconnection with paging carriers, such as PageNet, and to ask you to condition any approval of SBC's acquisition of Ameritech on SBC's compliance by June 15, 1999, with certain fundamental statutory and regulatory provisions key to the Telecommunication Act of 1996.

Let there be no mistake, neither of these companies has been exemplary in negotiating interconnection agreements in good faith. Both have had every incentive to delay, and delay again because, unlike any other industry segment, this Commission's rules do not have a default termination compensation rate for interconnection, and are not interpreted by certain local exchange carriers as requiring payment of compensation until interconnection agreements are approved by state commissions (instead of payment from the date of the FCC's First Report and Order in FCC Docket 96-98, or the

date of the request for interconnection). However, Ameritech at least has begrudgingly, belatedly, and 18 months after PageNet's initial request under Section 251 of the Telecommunications Act, come to the table and truly negotiated, with PageNet, for interconnection in each of its five operating states.

Ameritech has agreed to deliver its local traffic to PageNet for termination to PageNet's customers without charging PageNet, consistent with FCC rules Section 51.703(b). This is consistent not only with the rule itself, but with the principles of cost causation, and with the way interconnection is handled between all other local carriers. Ameritech, while first requiring PageNet to do a TELRIC cost study (which cost PageNet hundreds of thousands of dollars for economists, the full-time dedication of in-house personnel, and lawyers both within and without the company), nonetheless has agreed to compensate PageNet for PageNet's costs of terminating local traffic at a rate which averages in excess of \$.005 per minute of use ("MOU"). Ameritech and PageNet have agreed that local calls constitute 90 to 95% of all calls, depending on the state. PageNet's compensation from Ameritech is not an aberration; it is in line with what Bell Atlantic is paying under its interconnection agreements with PageNet, and in line with Sprint's interconnection agreements with PageNet. (It is much less than PageNet's costs of call termination, but PageNet agreed to it given the circumstances and constraints under which PageNet was negotiating, including the unreasonably burdensome process for paging carriers which this Commission put in place pending establishing a termination rate for paging carriers.)

But, where does interconnection stand between SBC and PageNet? Nowhere.

From the inception of the Commission's First Report and Order in FCC Docket 96-98 implementing the Act, SBC has taken issue with its plain language. For example, in April 1997, SBC contended that the FCC's rules requiring ILECs to deliver ILEC-originated traffic to CMRS providers without charge did not prohibit SBC from charging paging carriers, such as PageNet, for the facilities which were used to deliver that local traffic. The Common Carrier Bureau emphatically responded in December 30, 1997, to SBC, that the FCC's rules "prohibit a LEC from imposing such charges."

SBC's response to this letter was not then to comply with the rule, but rather to submit a letter seeking yet another "clarification," and file for a stay of the FCC's rule, and an Application for Review. In its April 24, 1998 letter, SBC's statement makes clear that it understood the Bureau's reiteration of the FCC's rules. Notably, the stay has not been granted. Yet SBC still has not complied, and routinely sends the bills for SBC's facilities to PageNet, and to other paging carriers.

It continues to be SBC's position that it does not agree with the Commission's rules that require SBC to deliver its local traffic to PageNet without charge, and that it does not have to comply. Despite the Commission's letter directly to SBC, according to SBC, PageNet must pay for 100% of the facilities used to deliver SBC's local traffic to PageNet until such time as there is an interconnection agreement between the two companies, not just filed with the various state commissions, but approved by each.

And, as SBC well knows, PageNet (and other paging carriers) are unable to reach reasonable agreements with SBC because of SBC's unlawful insistence that paging carriers give up their right to any compensation as a condition of the agreement. At

PageNet's last in-person meeting with SBC in March, SBC informed PageNet that it "remains SBC's policy" that it will not pay compensation to paging carriers for the paging carrier's termination of local calls! At that meeting, PageNet asked for immediate reconsideration of those positions, given their blanket unlawfulness, and has done so again both in oral communications and written communications. At its last telephonic communication, with SBC last month, PageNet was informed that it is still SBC's policy not to compensate paging carriers. Of course, according to SBC representatives, SBC is "continuing to evaluate this policy." This stone-walling suggests SBC is unwilling to recognize the rights of other carriers under the Act, as well as SBC's own obligations in that regard, even though it is among the first to demand that its own potential rights under the Act be bestowed, *e.g.* even where it has not met the Section 271 "checklist" which serves as a precondition to those rights.

It is worth noting that SBC's interconnection agreements with other wireless carriers, such as those owned by SBC, do provide for termination compensation to the wireless carrier, regardless of whether the call is a voice call or a short messaging call identical to those terminated by PageNet and other paging carriers. Thus, SBC's current "policy" with respect to termination compensation to paging carriers not only violates clear and unequivocal FCC rules, and Section 251(b)5 of the 1996 Act, but unlawfully discriminates in favor of its own wireless affiliates.

Not only has SBC not been willing to negotiate in good faith in its original territories, SBC has sent a formal letter terminating PageNet's interconnection agreement with Pacific Bell, entered into under Section 252(i), after an arbitrated

decision of the California PUC, and so, PageNet will need to begin re-negotiation of that agreement shortly. And how do we anticipate those negotiations will go? Poorly; because SBC has indicated through its conduct that it has no intention of complying with this Commission's rules, or the Act and, to date, there has been no penalty imposed on it for its conduct.

Just when will SBC comply with the FCC's rules? Apparently, it will do so only once the FCC holds a hammer over its head, creating incentives that are stronger than SBC's incentive and ability to abuse its monopoly power.

Let me be clear. This is not just a paging industry issue. If SBC is willing to ignore the Commission's rules and the Act's mandate with respect to this small segment of the industry, what might it do – what is it doing -- where it perceives its own customer base at risk? Where are we as a telecommunication industry, when this scofflaw mentality, this blanket disregard for laws that were set up to promote competition among all industry segments, and promote consumer choice of technology and service providers among all industry segments, spreads like a rapid cancer to the Pacific Bell properties and then, if this Commission lets it go unchecked, to the Ameritech properties?

Given SBC's aggressive conduct, at a minimum, this Commission should condition approval of SBC's acquisition of Ameritech on SBC immediately – say, as of June 15, 1999, entering into agreements no less favorable than the Ameritech agreements, as amended, with PageNet in each of SBC's existing operating territories and, similarly, require SBC to allow other paging carriers, large and small, to enter into those same

agreements, as amended, under Section 252 (i). (As difficult as the negotiation/ arbitration process has been for PageNet, it is virtually impossible for the smaller carriers unless their rights under Section 252(i) are aggressively recognized by this Commission.) The Commission should also condition any acquisition by SBC on SBC's cessation of billing paging carriers for facilities, and the immediate refund all monies for facilities paid since the Commission's order in 96-98 requiring it to cease charging became effective, with payment by SBC of the maximum amount of interest allowed by law, plus appropriate penalties.

It is time to force SBC to comply with the rules, and with the Act. This Commission has before it a vehicle, a bully pulpit, a hammer with which to make SBC comply. PageNet, for itself, and on behalf of its fellow paging and messaging carriers, and customers, asks this Commission to use all means necessary to make SBC immediately comply with the rules of this Commission and the Act.

Thank you.

## CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that a copy of the foregoing *Written Comments of Judith St. Ledger-Roty on Behalf of Paging Network, Inc., Public Forum on SBC Communications, Inc., and Ameritech Corporation Applications for Transfer of Control* was, this 7<sup>th</sup> day of May 1999, delivered by hand to the following individuals:

William E. Kennard, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Thomas Power, Legal Advisor  
Office of Chairman Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Gloria Tristani, Commissioner  
Federal Communications Commission  
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Sarah Whitesell, Legal Advisor  
Office of Commissioner Tristani  
Federal Communications Commission  
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Susan Ness, Commissioner  
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Michael Powell, Commissioner  
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Common Carrier Bureau  
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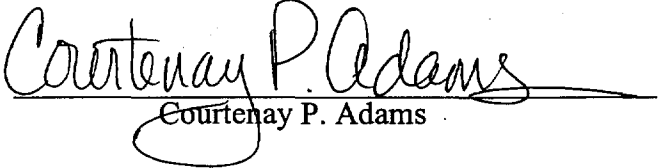
Carol Matthey, Chief  
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Thomas J. Sugrue, Bureau Chief  
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Courtenay P. Adams

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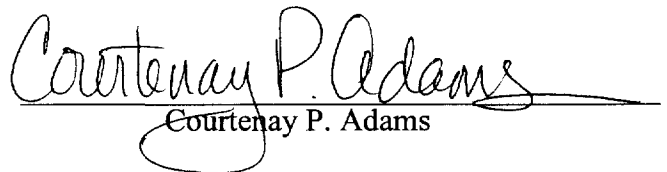
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